

## Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /158 W

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P 092144Z SEP 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9072

C O N F I D E N T I A L USUN 3645

FROM US DEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT SEPTEMBER 8

1. INFORMAL PLENARY SEPTEMBER 8 COMPLETED ARTICLES 26 TO 32  
OF ANNEX 1C, PART IV, RSNT.

2. ARTICLE 26 (PROVISIONAL MEASURES) WAS THE SUBJECT OF A  
NUMBER OF RESTATEMENTS OF POSITIONS PUT FORWARD IN REGARD TO  
ARTICLE 12 OF THE MAIN TEXT OF PART IV. IN ADDITION, PERU  
PROPOSED AN AMENDMENT INSTRUCTING THE TRIBUNAL TO BEAR  
ARTICLE 18 IN MIND WHEN PRESCRIBING PROVISIONAL MEASURES,  
BUT FRANCE, SAUDI ARABIA, US AND AMERASINGHE POINTED OUT THAT  
ARTICLE 18 APPLIES ACROSS THE BOARD SO THAT IT IS UNNECESSARY  
TO MENTION IT HERE. ECUADOR, WITH SUPPORT OF US AND TURKEY  
PROPOSED AN AMENDMENT ALLOWING THE TRIBUNAL TO TERMINATE  
PROVISIONAL MEASURES AT THE REQUEST OF A PARTY TO THE  
DISPUTE IF THE CIRCUMSTANCES JUSTIFY IT. SWITZERLAND,  
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ISRAEL, INDIA, FRANCE AND SAUDI ARABIA WISHED THE TEXT OF PARA. 1

TO FOLLOW ARTICLE 41 OF THE ICJ STATUTE MORE CLOSELY, BUT THE FRG AND KENYA THOUGHT THE SNT TEXT WAS AN IMPROVEMENT. INDIA, FRANCE, AND ISRAEL DID NOT WISH TO ALLOW CHAMBERS TO PRESCRIBE PROVISIONAL MEASURES AND US SAID IT WOULD NOT RPT NOT INSIST ON IT'S POSITION IN THAT REGARD. BAHRAIN SUGGESTED WITH RESPECT TO THE QUESTION WHETHER THE TRIBUNAL COULD ACT AT ITS OWN INITIATIVE THAT MEASURES TO PRESERVE THE RIGHTS OF THE PARTIES MIGHT BE PRESCRIBED ON THE TRIBUNAL'S INITIATIVE, WHILE MEASURES TO PROTECT THE ENVIRONMENT SHOULD BE MADE ONLY UPON REQUEST OF A PARTY TO THE DISPUTE. YUGOSLAVIA AND US SUGGESTED THE OPPOSITE, TO WIT, THE TRIBUNAL COULD ACT AT ITS OWN INITIATIVE TO PROTECT THE ENVIRONMENT.

3. ON ARTICLE 27 (CONDUCT OF CASE) ISRAEL AND BAHRAIN WISHED TO INCORPORATE REQUIREMENTS IN ARTICLES 46 AND 58 OF THE ICJ STATUTE FOR PUBLIC HEARINGS AND THE READING OF JUDGEMENTS IN PUBLIC SESSION. ECUADOR SAID THAT ARTICLE 28 (DEFAULT OF APPEARANCE) SHOULD NOT RPT NOT REFLECT A PRESUMPTION IN FAVOR OF AN APPEARING PARTY'S CASE IN EVENT OF NON-APPEARANCE. ISRAEL AND AMERASINGHE THOUGHT THE EXISTING TEXT WOULD ONLY LEAD TO A DEFAULT JUDGEMENT IF THE APPEARING PARTY'S CASE IS MERITORIOUS, WHILE TURKEY AND LIBERIA SUPPORTED ECUADOR. LIBERIA SUGGESTED THAT A DEFAULTING STATE SHOULD HAVE THE OPPORTUNITY TO DECIDE TO APPEAR AFTER THE DEFAULT JUDGEMENT AND APPEAR WITHIN 4 OR 5 MONTHS.

4. UKRAINE THOUGHT THE REFERENCE IN ARTICLE 29 (MAJORITY FOR DECISION) TO A MAJORITY OF JUDGES PRESENT COULD LEAD TO A DECISION BY TWO OF THREE JUDGES, AND WISHED TO DELETE THE WORDS QTE WHO ARE PRESENT UNQTE IN PARA. 1. HUNGARY, FRANCE AND US POINTED OUT THAT THE QUORUM REQUIREMENT IN ARTICLE 14 SOLVED THE PROBLEM.

5. UKRAINE, WITH SUPPORT OF ISRAEL AND BULGARIA, PROPOSED DELETION OF REFERENCE TO INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS AND PERSONS IN ARTICLE 32 (REQUEST TO INTERVENE). FIJI PROPOSED A NUMBER OF

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AMENDMENTS TO CLARIFY AMBIGUITIES ARISING FROM ICJ PRACTICE. FIJI SUGGESTED THAT AN APPLICATION TO INTERVENE SHALL BE CONSIDERED ON ACCEPTANCE OF JURISDICTION, THE INTERVENOR BE TREATED AS A PARTY TO THE DISPUTE, AND THAT A HEARING BE HELD ON ANY REQUEST TO INTERVENE BEFORE IT IS DECIDED BY THE TRIBUNAL. ISRAEL URGED CAUTION DUE TO SENSITIVITY OF THE JURISDICTIONAL LINK ISSUE. FRG, AUSTRALIA AND NEW

ZEALAND SUPPORTED FIJI'S APPROACH. ISRAEL AND  
NEW ZEALAND RAISED QUERIES ABOUT THE MEANING OF  
THE PHRASE "INTEREST OF A LEGAL NATURE." TUNISIA AGAIN  
RESERVED ITS POSITION UNTIL ONE TRIBUNAL/TWO TRIBUNAL  
PROBLEM IS DECIDED.  
BENNETT

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